76-5167



# Supreme Court of the United States

October Term, 1976
No. _____

LUCIO P. SALVUCCI — Petitioner

*versus*

THE NEW YORK RACING ASSN., INC. et al — Respondent

---

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

---

LUCIO P. SALVUCCI
746 Commercial Street
Weymouth, Mass. 02189

## TABLE OF CONTENTS


page

OPINIONS BELOW ..... 1
JURISDICTION ..... 2
QUESTIONS PRESENTED ..... 2
CONSTITUTIONAL PROVISIONS ..... 3
STATEMENT OF THE CASE ..... 3 - 6
REASONS FOR GRANTING THE WRIT ..... 6 - 9
CONCLUSION ..... 9
CERTIFICATE OF SERVICE ..... 10
APPENDIX ..... 1a - 10a

PETITIONER'S COPYRIGHTED WORKS
Tri-3 & Tri-3 Double ..... 9a
PARALLEL SIMILARITIES
of Triple and copyrighted works ..... 10a

LETTER OF ACCESS ..... 1a

US Court of Appeals for the Second Circuit
Denial on Re-hearing ..... 8a

# TABLE OF CASES AND AUTHORITIES


PAGE

Cases:

*Bradbury v. Columbia Broadcasting System Inc. D.C. Cal. 1959 174 F. Supp 733, Reversed on other grounds 287 F. 2d 478 certiorari dismissed 82 S.Ct. 19, 383 U.S. 801, 7L Ed. 2d 15* ..... 6

*Donald v. Zack Meyer's T.V. Sales & Service C.A. Tex. 1970, 426 F. 2d 1027, certiorari denied 91 S. Ct. 459, 400 US 992, 27 L Ed. 2d 441*..... 7

*Addison-Wesley Pub. Co. v. Brown, D.C. N.Y. 1963, 223 F. Supp 219*..... 7

*Warner Bros. Pictures v. Columbia Broadcasting System, C.A.Cal. 1954. 216 F. 2d 945, certiorari denied 75 S. Ct. 532, 348 U.S. 971, 99 L. ED. 756* 8

*Berlin v. E.C. Publications, Inc. D.C.N.Y. 1963. 219 F. Supp. 911 affirmed 329 F. 2d 541, 9 A.L.R. 3d 612. certiorari denied 85 S. Ct. 46, 379 U S 822. 13 L. Ed. 2d 33*..... 8

*Richards v. Columbia Broadcasting System, Inc., D.C.D.C. 1958. 161 F. Supp. 516*..... 8




**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1976**
**NO._____**

**LUCIO P. SALVUCCI** *Petitioner*
*Pro Se*

*versus*

**THE NEW YORK RACING ASSN., INC.** *Respondent*
**et al**

---

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

---

The Petitioner, Lucio P. Salvucci, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on April 21, 1976.

## OPINIONS BELOW

The opinion of the Court of Appeals has been officially or unofficially reported and is appended hereto.

## JURISDICTION

Under the Statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question is Appeals (Section 38 (117) of Title 17 USC).

The United States Court of Appeals for the Second Circuit ordered dismissed and entered on April 21, 1976. (A. 6a, 7a)
A petition for a re-hearing to the United States Court of Appeals for the Second Circuit was filed May 3, 1976 and denied July 16, 1976. (A. Pg. 8a)

The Statutory provision believed to confer on the court jurisdiction to review the judgment or decree in question is Appeals (Section 38 (114).

## QUESTIONS PRESENTED

1. Whether Petitioner was denied his constitutional guarantee of his copyrights (Class A Books) under Article I Title 17 USC § 101 infringement because the Eastern District Court of New York in the First Instance, and the Circuit Court of Appeals for the Second Circuit has decided a federal question in a way in conflict with the applicable decisions of this court.

2. Whether Petitioner was denied his constitutional guarantee of his copyrights under Article XIV Section I by being denied his property right without due process and also being denied his rights of equal protection of the laws.



## CONSTITUTIONAL PROVISIONS

A. Title 17 USC
Sections 5, 101.

1. Section 5 Classification of Copyrighted works.

2. Section 101 involves infringement of copyright; if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable.

B. XIV Amendment

Section I Constitutional guarantee of the due process and equal protection of the laws.

## STATEMENT OF THE CASE

Petitioner states that under the Copyright Act of 1790 the Congress of the United States was given the power to render exclusive rights for a limited time to authors for their writings. This right allows solely to the author the right to print, reprint, publish, copy, vend, and translate into other languages and dialects, or make any other version thereof, and prohibits any one else from doing the same without permission.

The petitioner filed a complaint in the United States District Court for the Eastern District of New York on July 31, 1975 alleging copyright infringement of his copyrights by the respondents in their use of similar wager offerings for parimutuel betting at horse racing establishments in New York.

The respondents moved to dismiss the complaint pursuant

to Rule 12 (b) (6) of the F.R.C.P. for failure to state a claim upon which relief can be granted. Said motion was granted by the trial court stating: (1) "The court finds no genuine issue of fact exists since plaintiff's method of expression was never employed by respondents. The limited copyright of the expression of the methods of betting was not infringed."

(2) Respondent's motions are in all respects granted. (A. Pg.5a ). Under (1) above the petitioner's valid copyright is acknowledged by the court and as such a valid show cause is present. However, under (2) above the Court allowed all the motions of the respondents; granted, even though the F.R.C.P. Rule 12 (b) (6) concerns a no show cause which is in conflict with the affirmed valid copyright of which a legitimate show cause of (1) above is presented.

Because of this conflict of statements by the District Court this court should correct this manifest error.

The U S Court of Appeal for the Second Circuit on April 21, 1976 on appeal from a judgment of the U S District Court for the Eastern District of New York affirmed the District Court's decision. (A. pg. 6a, 7a). By so doing there attaches to itself all the above petitioner's statements and reasons of conflict and error within the District Court's decision. They too are in manifest error and should be corrected by this court.

It has long been established by the many applicable decisions of this court that access admitted, similarity admitted, parallelism of similarities of the original, and the alleged infringing work, that copying by paraphrasing is present.

The copying that is present here was made possible by The



New York Racing Association, Inc. having access to the copyrighted works and by admittedly studying and "discussing them in detail." There can be no acceptable denial from respondents of the opportunity of having access to these copyrighted works and of using the opportunity which was presented to them through the meeting and subsequent communications of 1963. (A. Pg. 1a ).

Ten years later, in 1973, by paraphrasing the petitioner's copyrighted work, The New York Racing Association, Inc. put into use a new form of wager offering for pari-mutuel betting entitled Triple which is saying the exact same thing as the original copyrighted wager offerings Tri-3 and Tri-3 Double copyrighted in 1962; thereby infringement is present, paraphrasing not being legal under federal law. Under the XIV Amendment the petitioner was deprived his property right without due process of law, and also was denied his equal protection of the laws in relation of Title 17 USC § 101.

In 1974, while Thomas J. Meskil was Governor of Connecticut, the petitioner wrote to him concerning his several copyrighted works on multiple exotic type forms of pari-mutuel wagers. On October 11, 1974 the then Governor Meskil wrote to the petitioner and as a result of that communication a meeting was arranged between the petitioner and John MacDonald, Executive Secretary of the State of Connecticut Commission on Special Revenue, which meeting was kept.

The petitioner submits that since it was this same Thomas J. Meskil who presided as one of the three judges in the petitioner's appeal to the United States Court of Appeals of the Second Circuit, that a probable conflict of interest existed from which

the petitioner was denied his property right without due process and was also denied his rights of equal protection of the laws under the XIV Amendment.

## REASONS FOR GRANTING OF THE WRIT

The petitioner, through council, in the First Instance, by virtue of his original writing, made it known, that by adhering to the Copyright Act of 1790 allowing authors exclusive rights for their writings, and by following all Statutory requirements of the Copyright office regarding the Copyright Act of 1909 Title 17 USC, from which a Certificate of Copyright was issued to petitioner, a prima facie case of copyright was established.

The decisions of the U S District Court for the Eastern District of New York and the U S Court of Appeals for the Second Circuit are clearly in conflict and in manifest error. The District Court stated and was affirmed by the Court of Appeals that because the respondents did not employ the petitioner's method of expression the limited copyright of the petitioner's expression was not infringed. This reason for dismissal clearly involves a federal question in a way which is in conflict with applicable decisions of this court and should be reversed.

In Bradbury v. Columbia Broadcasting System Inc. D.C. Cal. 1959 174 F. Supp 733, Reversed on other grounds 287 F. 2d 478 Certiorari Dismissed 82 S. Ct. 19, 383 U.S. 801, 7L Ed. 2d 15. Access alone means nothing, but where access to copyrighted material is shown, the probability of copying is high. Also, from the letter received by the petitioner from the respondents July 19, 1963 there exists no coincidence



in the respondents wager offering Triple and the petitioner's copyrighted works Tri-3 and Tri-3 Double.(A. pg. 9a, 10a).There does exist not only verifiable and unrefutable access, but also substantial similarity.

It is a fact that the respondents had access to the petitioner's copyrighted works and therefore had reasonable opportunity to view, review, and study the works, and did so by admittedly stating they "studied in detail" the copyrights involved. (Letter A. pg. 1a ).

Also in the respondent's memorandum in support of their motion for summary judgment "It is obvious that plaintiff's copyrighted works, the Tri-3 describes, albeit in the most rudimentary detail the form of wager known in New York both as the Triple or Trifecta" admits to similarity and when combining the letter of access of July 19, 1963 and the parallel similarities, there is strong evidence of infringement present.

Copying by paraphrasing may occur even where there is little or no identity of language between the respective passage, Id. In copyright law paraphrasing is equivalent to outright copying Donald v. Zack Meyer's T.V. Sales & Service C.A. Tex. 1970, 426 F. 2d 1027, certiorari denied 91 S. Ct. 459, 400 US 992, 27 L Ed. 2d 441. Paraphrasing or copying of copyrighted work with evasion is infringement even though there may be little or no conceivable identity between subsequent work and original work. Addison-Wesley Pub. Co. v. Brown, D.C. N.Y. 1963, 223 F. Supp 219. By paraphrasing the petitioner's copyrighted works the respondents are saying the same thing as the petitioner's.

Where a study of two writings reveals that one of them is not in fact the creation of putative author but instead has been copied in substantial part exactly or in transparent re-phrasing to produce essentially the story of other writing, there has been an infringement of the copyright. Warner Bros. Pictures v. Columbia Broadcasting System, C.A. Cal. 1954, 216 F. 2d 945, certiorari denied 75 S. Ct. 532, 348 U.S. 971, 99 L. Ed. 756.

"Infringement" occurs when an accused work is a colorable copy or paraphrase of the copyrighted work, but the copying must be visible by the ordinary observer and must be of a substantial portion of the protected work. Berlin v. E. C. Publications, Inc. D.C. N.Y. 1963. 219 F. Supp. 911. affirmed 329 F. 2d 541, 9 A.L.R. 3d 612. certiorari denied 85 S. Ct. 46, 379 U S 822. 13 L.Ed. 2d 33.

"Copying" involves use of an original work so as to produce a work so near to the original as to give every person seeing it the idea created by the original. Richards v. Columbia Broadcasting System, Inc., D.C.D.C. 1958. 161 F. Supp. 516.

Furthermore, under Article XIV § 1 Constitutional guarantee is deprived the petitioner his literary property without due process of the law because of the existing conflict of interest, decisions of the courts, and also denying his equal protection of the laws by deciding a federal question in a way that is in conflict with applicable decisions of this court.

Thus the questions involved in this case are whether (1) Is there any similarity between the earlier work and the later one? (A. pg. 9a, 10a). (2) Is the similarity the result of copying by paraphrasing? (A. pg. 1a ). (3) Has a material or substantial part of the original been copied? (A. pg. 9a, 10a). (4) Was the original writing duly copyrighted? (A. pg. 9a, 10a). (5) Has there been admittance of similarities of both works by the respondents? (Pg. No. 7). (6) Was the petitioner denied his constitutional guarantee from due process under Article XIV § 1 and was he denied his rights of equal protection under the laws?



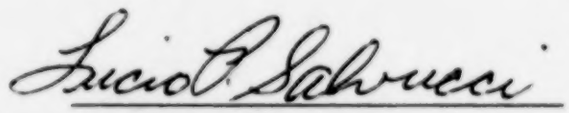
All the above questions are answered in the affirmative.

The copying, by paraphrasing, that is present here was made possible by The New York Racing Association, Inc. having access to the copyrighted works and by admittedly studying and "discussing them in detail" (A. pg. 1a ). and by also admitting similarities. (Pg. No. 7 ). There can be no denial from respondents of the opportunity of having access and of using the opportunity which was presented through the meeting and subsequent communications of 1963.

## CONCLUSION

For the reasons set forth above, it is respectfully submitted that the petitioner for a Writ of Certiorari be granted

Respectfully submitted,



746 Commercial Street
Weymouth, Mass. 02189

LUCIO P. SALVUCCI
*Pro Se*

## CERTIFICATE OF SERVICE

I, LUCIO P. SALVUCCI, Pro Se, Petitioner, hereby acknowledge that on OCT. 13, 1976 , I mailed a copy of the herein enclosed writ of certiorari to the United States Supreme Court through the U.S. Postal Service, postage prepaid, to the following:

Bauer, Amer & King, P.C.
114 Old Country Road
Mineola, New York 11501

Cahill Gordon & Reindel
Eighty Pine Street
New York, N.Y. 10005

W. Bernard Richland
Municipal Building
New York, N.Y. 10007

Lucio P. Salvucci

LUCIO P. SALVUCCI *Pro Se*

746 Commercial Street
Weymouth, Mass. 02189

# APPENDIX

NYRA

THE NEW YORK RACING ASSOCIATION, INC. JAMAICA 17, LONG ISLAND, NEW YORK
Director of Mutuel Department

July 19, 1963

Mr. Lucio P. Salvucci
746 Commercial Street
E. Weymouth, Mass. 02189

Dear Mr. Salvucci:

I have your letter of July 12, with reference to our meeting on June 13, at which time you showed me several copyrighted new types of wagering which we discussed.

I have taken these up in detail with the President and Vice President of our Association and we are not interested in using any of these types of wagering in the immediate future.

If you desire the return of the copies you left with me, kindly advise me and I will forward same to you immediately.

Yours sincerely,

L. M. Walger

*Aqueduct* *Belmont Park* *Saratoga*



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUCIO P. SALVUCCI — 75 C 1236

Plaintiff,

- against -

THE NEW YORK RACING ASSN., INC., NEW YORK CITY OFF-TRACK BETTING CORP.; ROOSEVELT RACEWAY, INC.; and JOSEPH A. GIMMA, AS HE IS CHAIRMAN OF THE NEW YORK STATE RACING COMMISSION.

Defendants.

Memorandum or Decision and Order

December 2, 1975

---

MISHLER, CH. J.

Defendants, New York Racing Association, Inc. (NYRA), Roosevelt Raceway, Inc. (Roosevelt), and Joseph A. Gimma, move for summary judgments, Rule 56 (F.R. Civ.P.).[1]

[1] All the motions seek alternative relief under F.R.C.P. 12(b) (6), i.e., to dismiss the complaint for "failure to state a claim upon which relief can be granted." All the parties, with the exception of Gimma, submitted affidavits.

Plaintiff alleges four counts of copyright infringement; each separately directed against one of the four defendants. He claims that he is the owner of copyrighted works registered in the office of the Register of Copyrights on April 2, 1962, as Tri-3 Double and Tri-3.[2]

Pari-mutuel betting is controlled by statute in New York State – N.Y. Unconsolidated Laws, §§7952, 7954 and 8008. Methods of betting at authorized establishments are sanctioned by the New York State Racing and Control Board. In addition to conventional betting at thoroughbred and harness race tracks, the Board has approved the Daily Double, Quinella, Exacta, Trifecta (sometimes called the triple), and Superfecta.[3]

[2] The copyrighted works consist of methods of betting. The methods as described in the certificate of registration are appended to this memorandum of decision and order.

[3] In the Daily Double, the bettor must select the winner in each of two designated races.

In the Quinella, the bettor must select the two horses in each of two designated races that finish first and second.

In the Exacta, the bettor must select the first two horses in their actual order of finish in the designated race.

The Tri-Fecta (Triple) is a variation of the Exacta. The first three horses in the designated race must be selected in their actual finish.

The Superfecta is a further variation of the Exacta: the first four horses are selected in their order of finish.

The method of betting is not copyrightable. Novel and useful ideas may attain patent protection, but not copyright



protection. In Baker v. Selden, 101 U.S. 99 (1880), plaintiff obtained a copyright on a book explaining a system of bookkeeping. The court dismissed the claimed copyright infringement noting:

> *There is no doubt that a work on the subject of bookkeeping though only explanatory of well known systems, may be the subject of a copyright; but, then, it is claimed only as a book . . . The novelty of the art or thing described or explained has nothing to do with the validity of the copyright. . .*
>
> *. . .The copyright of a book on bookkeeping cannot secure the exclusive right to make, sell and use account books prepared upon a plan set forth in such book. . .101 U.S. at 101-02, 104.*

It is the manner of expressing and not the idea itself which is copyrightable. L. Ratlin & Son, Inc. v. Jeffrey Synder, d/b/a J.S. and Etna Products Co., Inc. No. 75-7308 (2d Cir. October 24, 1975); Roth Greeting Cards v. United Car Co., 429 f.2d 1106 (9th Cir. 1970); Welles v. Columbia Broadcasting System, Inc., 308 F.2d 810 (9th Cir. 1962). The instant copyrights attempt to protect the method of betting and are invalid.[4]

[4] Plaintiff's copyrights were held invalid in Salvucci v. New Hampshire Jockey Club, No. 75-223 and 75-224 (D.N.H. October 6, 1975). The court is advised that the decision is on appeal.

Alternatively, should the complaint be interpreted as an infringement of the expression of the betting method, rather than the method itself, the court finds no genuine issue of fact exists since plaintiff's method of expression was never employed by defendants.

The limited copyright of the expression of the methods of betting was not infringed. Defendants' motions are in all respects granted, and it is

SO ORDERED.

The Clerk of the Court is directed to enter judgment in favor of defendants and against plaintiff dismissing the complaints.

/s/ Jacob Mishler
U.S. D.J.



**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the Twenty-first day of April one thousand nine hundred and seventy-six.

PRESENT:

Honorable Henry J. Friendly
Honorable Paul R. Hays
Honorable Thomas J. Meskill

---

LUCIO P. SALVUCCI,

Plaintiff-Appellant,

#76-7022

v.

THE NEW YORK RACING ASSOCIATION, INC.; NEW YORK CITY OFF-TRACK BETTING CORP.; ROOSEVELT RACEWAY, INC.; and JOSEPH A. GIMMA, CHAIRMAN, NEW YORK STATE RACING COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court is affirmed on the opinion of Chief Judge Mishler, _____ F. Supp. _____, dated December 2, 1975.

/s/ Henry J. Friendly
/s/ Paul R. Hays
/s/ Thomas J. Meskill



PRO SE UNITED STATES COURT OF APPEALS
7/7/76
76-7022 Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Sixteenth day of July, one thousand nine hundred and seventy-six.

---

Lucio P. Salvucci,

Appellant,

v.

New York Racing Ass'n, et al.,

Appellees.

---

A motion having been made herein by Appellent pro se for rehearing

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

/s/ Henry J. Friendly (by TJM)

/s/ Paul R. Hays

TJM HJF PRH

/s/ Thomas J. Meskill Circuit Judges

TRI-3 Copyrighted 1962

TRI-3 is a 3 finish position play or wager on horses or dogs.

The object is to select correctly all finish positions starting with your first chosen finish position of your TRI-3 ticket.

If no one selects correctly all three finish positions, then the person(s) getting the most consecutive correct finish positions starting with their first chosen finish position of their TRI-3 ticket is the winner.

TRI-3 DOUBLE Copyright 1962

TRI-3 DOUBLE is a finish position play or wager consisting of positions 1, 2, and 3 in two races on horses or dogs.

The object of this TRI-3 DOUBLE is to select correctly the chosen finish positions in both races of the play or wager.

Winning tickets with the correct first three chosen positions (first half of the TRI-3 DOUBLE) must be exchanged for your selections on the second half of the TRI-3 DOUBLE.

The person(s) getting the most consecutive correct finish positions starting with their first chosen finish position on the first half of the TRI-3 DOUBLE ticket will be the winner.

TRIPLE Started 1973

The TRIPLE is a form of pari-mutuel wagering. Each bettor selects, in order, the first, second, and third placed horses in the designated TRIPLE race.

If there is a failure to select, in order the first three horses, payoff shall be made on TRIPLE tickets selecting the first two horses, in order; failure to select the first two horses, payoff to



TRIPLE tickets selecting the winner to win; failure to select the winner to win shall cause a refund of all TRIPLE tickets.

SIMILARITIES of TRI-3 and first part of TRI-3 DOUBLE

1. A new type wager offering.
2. Object: To select exact 3 positions on one ticket of one race.
3. Absent exact 3 positions winner of exact two positions.
4. Absent exact two positions winner of win position.
5. Played from a single three numbered ticket on one race the first time ever offered.

SIMILARITIES of the TRIPLE

1. A new type wager offering.
2. Object: To select exact 3 positions on one ticket of one race.
3. Absent exact 3 positions winner of exact two positions.
4. Absent exact two positions winner of win position.
5. Played from a single three numbered ticket on one race the first time ever offered.

The TRI-3 and TRI-3 DOUBLE expressions above are the exact wording as they appear in the copyrighted writing.

The TRIPLE expressions above are the exact wording as they appear in the Rules and Regulations of the New York Racing Association. § 4122.41 with words unrelated to the wager offering.